

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Review of the Commission's Rules
Regarding the Main Studio and
Local Public Inspection Files of
Broadcast Television and Radio Stations

47 C.F.R. §§ 73.1125, 73.3526 and 73.3527

MM Docket No. 97-138

COMMENTS OF ODYSSEY COMMUNICATIONS, INC.

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To the Commission

COMMENTS OF ODYSSEY COMMUNICATIONS, INC.

Odyssey Communications, Inc. ("Odyssey"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby submits these Comments in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding. 1/ In the *Notice*, the Commission requested comments regarding its proposed relaxation of Section 73.1125 of the Commission's Rules (the "main studio rule") as well as the public inspection file requirements contained in Sections 73.3526 and 73.3527 of the Rules. Odyssey urges the Commission to eliminate the unreasonable burdens imposed by the main studio rule, as main studios no longer significantly facilitate the successful interaction of a broadcast

1/ *Notice of Proposed Rulemaking, In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, MM Docket No. 97-138 (May 28, 1997) ("Notice").

station with its community. Odyssey also supports several of the Commission's proposals for streamlining and clarifying the local public inspection file requirements for commercial stations.

I. THE COMMISSION SHOULD ELIMINATE THE OBSOLETE MAIN STUDIO RULE.

The interaction of a broadcast station with its community no longer depends on the presence of a main studio. For the last decade the Commission has consistently recognized the disappearing need for such a local studio because "the role of the main studio in the production of programming had diminished over the years [and] . . . community residents often communicate with stations by telephone or mail rather than visiting the studio." 2/ The continued advance of technology, including the advent of the internet and electronic mail, as well as the increasing use of facsimiles, has further reduced the limited role described by the Commission in 1987. 3/ Odyssey agrees with the number of broadcast entities that have recently

2/ Notice at ¶ 5 (citing *Report and Order, Amendment of Main Studio and Program Origination Rules for Radio and Television and Radio Broadcast Stations*, 2 FCC Rcd 3215, 3218-19 (1987) ("1987 Report and Order").

3/ Of course, there has never been any statutory requirement that broadcast stations maintain a main studio. Section 307(b) of the Communications Act of 1934, which the Notice describes as the basis for the main studio rule, *see Notice* at ¶ 4, simply requires the Commission to seek an equitable distribution of radio service nationwide.

challenged the main studio requirements as serving “no useful purpose, since they are not used to originate programming and are rarely visited by the public.” 4/

The experience of Odyssey’s nine radio stations throughout the country confirms the uselessness of main studios in today’s broadcast context. Although the Commission once thought a main studio would be necessary to “help expose stations to community activities,” 5/ new technologies have made it very unlikely that persons interested in contacting a radio station will travel to the station’s main studio in order to deliver some news or comment. During the last several years, few, if any, members of the public have visited the main studios operated by Odyssey’s broadcast stations. Instead, community members contact the stations by electronic mail and the Internet, as well as by mail and telephone. Odyssey has even installed a toll-free fax machine that exclusively receives listener comments and requests. In fact, today’s general public seems largely unaware that each station maintains a constant main studio presence within the station’s principal contour. If an individual wishes to speak to a station’s staff in person, he or she almost always visits the location from which the station broadcasts, and not the

4/ Notice at ¶ 7 (summarizing the petition for rulemaking filed by Apex Associates, Armak Broadcasters, Inc., Starview Media, Inc., Silverado Broadcasting Company, and Mountain View Broadcasting Company (the “Apex petition”)).

5/ Memorandum Opinion and Order, Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television and Television Broadcast Stations, 3 FCC Rcd 5024 (Aug. 17, 1988) at ¶ 24.

main studio. 6/ For purposes of community interaction, the main studio is no more than an expensive redundancy.

Nor does the presence of a main studio make it more likely that a station will air locally originated programming. 7/ Odyssey does not know of a single station that produces shows at its main studio unless that studio is also the originating location of the station's normal programming. In this regard as well, technological advances have made the main studio obsolete. Portable DAT machines and high quality portable cassette machines may readily be used to create quality programming from almost any location. Local public affairs programming that may once have been produced in a local studio may now be taped at any location, including offices of local officials, businesses, or even homes. A modern broadcast station could easily maintain its local programming without a main studio simply by setting aside a few personnel and some basic equipment to record that community's news or other public affairs.

6/ Although the main studio may also currently serve as the repository for a station's public file, such placement is hardly necessary under the Commission's rules. Currently, the Commission only requires the file to be kept at a reasonably accessible location in the station's community of license. Were the Commission to eliminate the main studio requirement, it could nonetheless maintain a requirement that the station's public file remain reasonably accessible to the public. To ensure that the public could locate the file, a station could be required to maintain a toll-free information line that would inform persons where the file is located.

7/ As described in the *Notice*, the Commission has long eliminated any requirement that stations originate a set minimal percentage of their programming from their main studios. *See Notice* at n.9.

In fact, the perpetuation of the main studio requirement only reduces the ability of many stations to serve their communities. The maintenance of a local studio creates significant and unnecessary expenses. The main studio requirement compels a station, whatever its economic context, to install and maintain an extra set of program origination and production facilities, as well as pay rent, utilities, and the salaries of at least two persons to staff the habitually unvisited studio. Odyssey, for example, may spend \$75,000 annually to operate a single main studio. The costs of the main studio in turn limits the ability of a station to sponsor new public services or to reach out to its community in more productive ways.

Ten years ago, the Commission relaxed the main studio rule because “developments in technology, the marketplace and [its] regulations” had eliminated the purpose of certain aspects of the rule. ^{8/} The Commission has since reaffirmed its commitment to the “longstanding Congressional and Commission policy in favor of reducing regulatory burdens consistent with the public interest.” ^{9/} In light of these established principles, the Commission should now eliminate the main studio rule in its entirety because there is no evidence that the rule continues to serve any aspect of the public interest, and there is certainly none sufficient to justify the expensive and extensive burdens the rule currently imposes on broadcast stations.

If the Commission is unwilling to endorse this logical reduction of every broadcast station’s regulatory burden at this time, it should at least attempt

^{8/} See *1987 Report and Order* at ¶ 46.

^{9/} See *Notice* at ¶ 8.

to make this burden as light as possible. The Commission should require only that a main studio be reasonably accessible to the community, a standard which has already been proposed by a number of broadcast operators. Although the Commission's search for a hard-and-fast rule may promise some minor benefits, a single mileage-based or even contour-based rule can hardly apply sensibly to every broadcast station throughout the country. Instead, the Commission should permit a broadcast station to choose any studio location and to prepare its local programming wherever it wishes as long as that broadcast station fulfills its continued obligation to serve the needs of the public. 10/

II. THE COMMISSION SHOULD REDUCE THE BURDENS OF KEEPING A PUBLIC INSPECTION FILE BY PERMITTING ELECTRONIC FILES AND LIMITING THE TYPES OF DOCUMENTS REQUIRED.

Although technology has not changed the fundamental requirement that stations keep their public files reasonably accessible, technology has created new and less burdensome means for ensuring community access to a station's file. The Commission should encourage stations to take advantage of this technology to limit the burdens on the industry associated with such recordkeeping.

10/ The Commission, of course, could offer examples of what would automatically qualify as reasonably accessible, including any location within the local radio market of co-owned radio broadcast stations. *See, e.g., Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, 11 FCC Rcd 12368, 12370 (1996) (defining "local radio market" to mean all of the "area encompassed by the principal community contours . . . of the mutually overlapping stations proposing to have common ownership").

Most critically, stations should be given the option of placing their entire public file on their World Wide Web site or other electronically accessible location. As the Commission has recognized, an electronic public file “can lead to better service to the public” by facilitating the station’s interaction with its community. 11/ A station that chooses this approach should be able to meet the requirement of providing access to its file simply by providing a computer terminal at some location in or near its community of license where those without an internet connection may obtain any file information they seek. 12/ If the station chooses to maintain a main studio, the computer terminal of course may be located at that location. Odyssey would also not object if the Commission required that a station that maintains its public file solely on its web site be willing to provide or mail any documents in that file to any party that is willing to pay a reasonable fee to cover the costs of the documents’ reproduction. 13/

Such a computer-based file system, along with a publicly accessible terminal, would also facilitate the community’s access to electronic mail sent to the station. Because comments to broadcast stations are increasingly of this sort, a station should be required to keep a computer file storing all electronic mail sent to the station. The Commission may also wish to require that stations be willing to

11/ See Notice at ¶ 31.

12/ See *id.* at ¶ 32.

13/ See 47 C.F.R. §§ 73.3526(f) & 73.3527(f).

provide a paper version of any electronic mail in exchange for a reasonable reproduction fee.

If the Commission is unwilling to rely entirely on computer access to a broadcast station's public file, it should only require that a broadcast station maintain its public file at a location convenient to its community of license. A main studio, if one is maintained by the licensee, should qualify as a *per se* convenient location.


The Commission should also reduce the regulatory burden of an inspection file by no longer requiring retention of documents that bear little or no relevance to a broadcast station's current operations. For instance, the Commission should eliminate any requirement that the current licensee reconstruct missing or incomplete public files maintained by previous owners of the station. Information that is related to prior ownership, such as previous ownership reports, programming and EEO practices, is largely irrelevant to the station's current operations, yet Odyssey has had to expend much money and effort attempting to cure the omissions of the former owners of Odyssey's broadcast stations. Similarly, a construction permit should need to be maintained in the file only until the construction is complete and the corresponding license issued.

III. CONCLUSION

Odyssey commends the Commission for seeking to eliminate or amend rules that serve no public purpose sufficient to justify the burdens they impose on broadcast stations. It urges the Commission to complete the work the Commission began in 1987 and end the requirement for a main studio. It also endorses the Commission's proposals to permit stations to maintain their public files electronically and to rescind any requirement that the current licensee must maintain files that were relevant only to a previous owner's operations.

Respectfully submitted,

ODYSSEY COMMUNICATIONS,
INC.

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